

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1154 of 1982

with

CROSS OBJECTIONS NO.338 OF 1998

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and  
MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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STATE OF GUJARAT

Versus

S K GADHVI & CO.

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Appearance:

MR B.D.DESAI, AGP, for the appellant

MR DT DAYANI WITH MS MAYA N BHAVNANI for Respondents

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CORAM : MR.JUSTICE J.N.BHATT and  
MR.JUSTICE A.M.KAPADIA

Date of decision: 06/04/99

ORAL JUDGEMENT(Per J.N.Bhatt, J.)

By this appeal under section 96 of the Code of Civil Procedure, 1908 (Code), the appellant-original defendant, State of Gujarat, has questioned the legality and validity

of the judgment and decree recorded in Special Civil Suit No.163 of 1977 and decided by the learned Civil Judge (SD), at Nadiad, on 22nd March, 1982.

The controversy, in this appeal, has shrunk down to a very narrow compass. Two contentions raised on behalf of the appellant, State of Gujarat, are :

- (i) That since the time was the essence of contract, the respondents-contractor failed to execute the work in time and therefore, they were defaulters and not entitled to damages.
- (ii) That the original tender submitted was by one partnership firm which then came to be dissolved and therefore the suit is not in a proper form.

After having given our anxious thoughts and considering the submissions raised before us and the evidence emerging from the record of the present case, we are convinced that the aforesaid two contentions are, totally, meritless and required to be rejected.

Unfortunately, the controversy of 1977 has yet not seen the light outside the tunnel of procedural conduit pipe. Be that as it may, we are satisfied that the Trial Court upon appreciation and appraisal of the evidence has, rightly, awarded an amount of Rs.2,60,155/- against the total claim in the suit made by the respondents of Rs.3,33,345.50 ps. The break-up of the suit claim is highlighted as under:

1. Work executed as per tender  
item and not paid 11,617.97
2. Amount of extra items 13,465.00
3. Cost of materials, plant etc.  
belonging to the plaintiffs and  
taken over by the department as  
per Commissioner's report 1,11,901.06
4. Amount claimed by the plaintiff  
over commissioner's report 61,277.95
5. Loss of profit on the unexecuted  
work of Rs.2,47,937/- @ 20% 49,587.52
6. Establishment expenses incurred  
from June 1972 to November 1973 36,000.00

7. Damages due to rise in cost of materials and labour wages on the work executed after the time limit at 10 of the executed work of Rs.1,00,000/- 10,000.00

8. Security deposit paid in terms of Bank guarantee 19,748.00

9. Refund of money deducted as compensation 19,748.00

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Total: 3,33,345.50  
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The respondents who were original plaintiffs filed the suit for the recovery of an amount of Rs.3,33,345.50 ps., inter alia, contending that the delay had occasioned on account of indifferent attitude on the part of the officers of the Department in not supplying drawings in time and not taking decision in respect of the applications made by the contractor. The appellant, original defendant, appeared and resisted the suit by filing written statement, Ex.17, inter alia, contending that the suit was not in the proper form and the contractor was a defaulter. The Trial Court raised 12 issues at Ex.26 upon the strength of the pleadings of the parties.

The Trial Court upon assessment of the evidence held issues Nos.1 to 7 in affirmative, issue No.8 in negative, issues Nos.9 &10 in affirmative, issue No.11 in negative and only granting an amount of Rs.2,60,155/- by way of damages against the suit claim. Hence this appeal at the instance of the original defendant-State.

Both the parties relied on voluminous documentary evidence to which reference will be made by us as and when required hereinafter in course of the discussion.

In fact, it may be noted that there was no serious dispute about the execution of the documents. The contract was awarded upon the acceptance of the tender for construction of a bridge on river Mehori near Kapadwanj. The tender agreement which was executed was accepted and implemented. The work was awarded, on 4.12.69. The estimated amount came to Rs.6,18,513.08 ps. The time stipulated in the contract was 24 months. The tender cost, admittedly, as accepted by the State, was Rs.5,69,032.50 ps. The work was, therefore, required to be concluded on or before

4.12.71. It is noticed from the evidence that on two occasions before the expiry of the time stipulated in the contract the Government invited fresh tenders by publishing the notice, which, on both the occasions came to be cancelled upon the representations made by the contractor. The design which was to be supplied by the contractor was submitted, on 4th February, 1972 was approved on 28.4.72 by the time when again arrival of monsoon was due. Therefore, there was delay on the part of the Government as observed by the Trial Court not only in approving the design but in supply of specifications.

Despite this, when the notice was served, the Department raised counter claim of Rs.74,000/- which compelled the contractor to resort to and knock the doors of justice by filing civil suit No.163/77 in the court of Civil Judge (S.D.), Nadiad.

In our opinion, the contention that there was default and delay on the part of the contractor is unacceptable and is, rightly, not accepted by the Trial Court while passing the impugned judgment and decree in favour of the contractor. The contractor has, successfully, established from the evidence that the working drawings were not supplied within reasonable time along with the work. So there was delay and default on the part of the Government. We, therefore, agree with the view recorded by the Trial Court on this score.

So is the position as far as the second contention advanced before us. We have not been able to understand as to why the second contention is raised when the cause list of the contractor original-plaintiff, respondents herein undoubtedly, showed that the original firm which came to be dissolved later on was impleaded along with three other partners. Therefore, there is no question of defect or incompetence in filing the suit. This contention is also, rightly, decided against the Government and in favour of the contractor.

After having taken into consideration the entire scenario emerging from the evidence on record and the discussions made by the learned Trial Judge in the impugned judgment, we have no hesitation in finding that the appeal on hand, at the instance of the State is, totally, sans substance and is required to be dismissed. We are sorry to say that when all of us talk of quick, expeditious and inexpensive justice, we have to decide a civil appeal after a period of 17 years and that too on a dispute which arose much prior to that. The appeal is, therefore, dismissed. The cross objections are not pressed. They are also,

therefore, required to be dismissed. Accordingly, cross objections are also dismissed, leaving parties to bear their own costs.

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(vjn)